

2011 Edition

Marriage in Connecticut

A Guide to Resources in the Law Library

- "The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men." [Loving v. Virginia](#), 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967).
- "Wherever in the general statutes or the public acts the term 'husband', 'wife', 'groom', 'bride', 'widower' or 'widow' is used, such term shall be deemed to include one party to a marriage between two persons of the same sex." Conn. Gen. Stats. [§ 1-1m](#) (2011).
- "'Marriage' means the legal union of two persons." Conn. Gen. Stats. [§ 46b-20](#) (2011).
- "The State makes itself a party to all marriages, in that it requires the marriage contract to be entered into before officers designated by itself, and with certain formalities which it has prescribed." [Dennis v. Dennis](#), 68 Conn. 186, 196, [36 A. 34](#), [37](#) (1896).
- "There are two types of regulations concerning the validity of a marriage: 1) Substantive requirements determining those eligible to be married and 2) The 'formalities prescribed by the state for the effectuation of a legally valid marriage.' [Carabetta v. Carabetta](#), 182 Conn. 344, 347 (1980). The formality requirements are of two sorts: 1) a marriage license and 2) solemnization." [Ross v. Ross](#), No. FA97 0162587 S (Ct. Super. J.D. Stamford-Norwalk, Aug. 10, 1998), 22 Conn. L. Rptr. 637.
- "Marital status, of course, arises not from the simple declarations of persons nor from the undisputed claims of litigants. . . . It is rather created and dissolved only according to law." [Hames v. Hames](#), 163 Conn. 588, 592-593, 316 A.2d 379 (1972).
- "A marriage ceremony, especially if apparently legally performed, gives rise to a presumptively valid status of marriage which persists unless and until it is overthrown by evidence in an appropriate judicial proceeding." [Perlstein v. Perlstein](#), 152 Conn. 152, 157, 204 A.2d 909 (1964).
- **Effect of annulment:** "Our annulment statute itself (46-28), although referring to 'void or voidable' marriages, provides that the court may grant alimony, and custody and support orders for any minor child, as in the case of divorce. Public Acts 1963, No. 105, amended the section by adding a sentence declaring that '[t]he issue of any void or voidable marriage shall be deemed legitimate.' These provisions are irreconcilable with the theory that even a marriage claimed to be void is, or upon the rendition of a decree of annulment retroactively becomes, an absolute nullity *ab initio* so that nothing in the way of a status or res ever flowed from the marriage." [Perlstein v. Perlstein](#), 152 Conn. 152, 159, 204 A.2d 909 (1964).
- "A marriage is dissolved only by (1) the death of one of the parties or (2) a decree of annulment or dissolution of the marriage by a court of competent jurisdiction." Conn. Gen. Stats. [§ 46b-40\(a\)](#) (2011).

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Treated Elsewhere

- [Annulment of Marriage and Civil Unions in Connecticut](#)
- [Dissolutions of Marriages and Civil Unions in Connecticut](#)
- [Legal Separation in Connecticut](#)

These guides are provided with the understanding that they represent only a beginning to research.

View our other pathfinders at
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This guide links to advance release slip opinions on the Connecticut Judicial Branch website and to case law hosted on Google Scholar and Google Books. The online versions are for informational purposes only.

Section 1: Who May Marry

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to persons who may marry in Connecticut
- CURRENCY:**
- 2011 Edition
- DEFINITIONS:**
- [Public Act No. 09-13, Section 4.](#) (NEW) (Effective from passage) A person is eligible to marry if such person is: (1) Not a party to another marriage, or a relationship that provides substantially the same rights, benefits and responsibilities as a marriage, entered into in this state or another state or jurisdiction, unless the parties to the marriage will be the same as the parties to such other marriage or relationship; (2) Except as provided in section 46b-30 of the general statutes, at least eighteen years of age; (3) Except as provided in section 46b-29 of the general statutes, not under the supervision or control of a conservator; and (4) Not prohibited from entering into a marriage pursuant to section 46b-21 of the general statutes, as amended by this act. [Codified at Conn. Gen. Stats. [§ 46b-20a](#)]
 - "Connecticut has its statutory scheme in place to implement its policy of delineating the relationships between persons under our jurisdiction who may properly enter into marriage. It has been for many years and still remains the declared public policy of the state." [Singh v. Singh](#), 213 Conn. 637, 656, 569 A.2d 1112 (1990).
 - **Affinity vs. Consanguinity:** "Affinity is 'the connection existing in consequence of marriage between each of the married persons and the kindred of the other.' *In re Bordeaux's Estate*, 37 Wn.2d 561, 565, 225 P.2d 433 (1950); annot., 26 A.L.R.2d 271." *Lavieri v. Commissioner of Revenue Services*, 184 Conn. 380, 383, 439 A.2d 1012 (1981). Affinity is distinguished from consanguinity, which is relationship by blood." [Remington v. Aetna Casualty & Surety Co.](#), 35 Conn. App. 581, 587, 646 A.2d 266 (1994).
- STATUTES:**
- CONN. GEN. STAT. (2011)
 - [§ 46b-21.](#) **Kindred who may not marry.** No person may marry such person's parent, grandparent, child, grandchild, sibling, parent's sibling, sibling's child, stepparent or stepchild. Any marriage within these degrees is void.
 - [§ 46b-29.](#) **Marriage of persons under conservatorship or guardianship**
 - [§ 46b-30.](#) **Marriage of minors** (a) No license may be issued to any applicant under **sixteen years of age**, unless the judge of probate for the district in which the minor resides endorses his written consent on the license. (b) No license may be issued to any applicant under **eighteen years of age**, unless the written consent of a parent or guardian of the person of such minor, signed

and acknowledged before a person authorized to take acknowledgments of conveyances under the provisions of section 47-5a, or authorized to take acknowledgments in any other state or country, is filed with the registrar. If no parent or guardian of the person of such minor is a resident of the United States, the written consent of the judge of probate for the district in which the minor resides, endorsed on the license, shall be sufficient. [Emphasis added]

[§ 53a-72a](#). **Sexual assault in the third degree: Class D Felony.**

[§ 53a-190](#). **Bigamy: Class D felony.**

[§ 53a-191](#). **Incest: Class D felony.**

- [Public Act No. 09-13](#). An Act Implementing the Guarantee of Equal Protection Under the Constitution of the State for Same Sex Couples.
- [Public Act No. 03-188](#). § 6 (Reg. Sess.). An Act Concerning Premarital Blood Test Requirements and Marriage Certificates. "(Effective October 1, 2003) Sections 19a-27, 46b-26 and 46b-27 of the general statutes **are repealed**. (Emphasis added.)"

LEGISLATIVE:

- SUSAN PRICE, [Kerrigan v. Commissioner Of Public Health](#), Connecticut General Assembly, Office of Legislative Research, OLR Research Report, 2008-R-0585 (November 7, 2008).
- SUSAN PRICE-LIVINGSTON, [Restricting Marriage to People Lawfully Present in the United States](#), Office of Legislative Research, OLR Research Report, 2003-R-0174 (February 13, 2003).
- SUSAN PRICE-LIVINGSTON, [History of Civil Marriage in Connecticut: Selected Changes](#), Connecticut General Assembly, Office of Legislative Research, OLR Backgrounder, 2002-R-0850 (October 15, 2002).

CASES:

- [Kerrigan v. Commissioner of Public Health](#), 289 Conn. 135, 957 A.2d 407 (2008). "...our conventional understanding of marriage must yield to a more contemporary appreciation of the rights entitled to constitutional protection. Interpreting our state constitutional provisions in accordance with firmly established equal protection principles leads inevitably to the conclusion that gay persons are entitled to marry the otherwise qualified same sex partner of their choice. To decide otherwise would require us to apply one set of constitutional principles to gay persons and another to all others."
- [Birmingham v. Stanek](#), No. HHB CV 06 4010372 S (Conn. Super. Ct. J.D. New Britain at New Britain) 43 Conn.L.Rptr. 506 (July 30, 2007) 2007 WL 1677097 Conn. Super. 2007, 2007 Conn. Super. LEXIS 1349 (Ct. April 12, 2007). "In *Hames v. Hames*, supra, 163 Conn. [588,] 598, the Supreme Court stated, '[i]t has long been settled that unless a statute expressly declares a marriage to be void, as in the case of an incestuous marriage (General Statutes § 46-1), or one attempted to be celebrated by an unauthorized person (General Statutes § 46-3), deficiencies will render the marriage dissoluble rather than void.' However, the Supreme Court also stated, immediately thereafter, that '[s]tatutory deficiencies are, of course, to be distinguished from substantive defects such as lack of the consent which, even at common law, is deemed

essential to forming the relationship." *Id.*, 163 Conn. 598."

- [Greten v. Estate Of Mack](#), No. CV 03 0285543-S (May 11, 2004), 2004 Conn. Super. LEXIS 1248, 2004 WL 1194199 (Conn. Super. 2004). "The plaintiff relies on *Carabetta v. Carabetta*, supra, 182 Conn.[344,] 349, which held that a marriage that is defective for want of a required statutory formality, such as a marriage license or solemnization of the ceremony, does not necessarily void the marriage. The issue before the court in *Carabetta* was 'whether, under Connecticut law, despite solemnization according to an appropriate religious ceremony, a marriage is void where there has been noncompliance with the statutory requirement of a marriage license.' *Carabetta v. Carabetta*, supra, 182 Conn. 345. The court recognized that '[i]n the absence of express language in the governing statute declaring a marriage void for failure to observe a statutory requirement, this court has held in an unbroken line of cases since . . . [1905], that such a marriage, though imperfect, is dissoluble rather than void.' (Citation omitted.) *Id.*, 349. The court then concluded that 'the legislature's failure expressly to characterize as void a marriage properly celebrated without a license means that such a marriage is not invalid.' *Id.* Similarly, in *Hames v. Hames*, 163 Conn. 588, 316 A.2d 379 (1972), the court reaffirmed that '[t]he policy of the law is strongly opposed to regarding an attempted marriage . . . entered into in good faith, believed by one or both of the parties to be legal, and followed by cohabitation, to be void.'"
- [State v. George B.](#), 258 Conn. 779, 796, 785 A.2d 573 (2001). "Accordingly, we affirm the trial court's ruling that an adopted granddaughter falls within the degree of kinship set forth in §§ 53a-72a (a) (2) and 46b-21."
- [Singh v. Singh](#), 213 Conn. 637, 656, 569 A.2d 1112 (1990). "In conclusion, a marriage between persons related to one another as half-uncle and half-niece is void under General Statutes 46b-21 and 53a-191 as incestuous."
- [Manndorff v. Dax](#), 13 Conn. App. 282, 535 A.2d 1324 (1988). "Our cases make clear that a court may be required to pass upon the validity of a marriage in the course of rendering a judgment in another action. See, e.g., *Eva v. Gough*, 93 Conn. 38, 104 A. 238 (1918) (appeal from probate court regarding appointment of administrator of estate); *Roxbury v. Bridgewater*, 85 Conn. 196, 82 A. 193 (1912) (action to recover expenses incurred in support of pauper); *Erwin v. English*, 61 Conn. 502, 23 A. 753 (1892) (action to obtain possession of land); see also *Metropolitan Life Ins. Co. v. Manning*, 568 F.2d 922 (2d Cir. 1977) (interpleader action to determine beneficiary of life insurance policy). It is true that this case is less clear because, unlike those cases, the sole relief sought is a declaration of the invalidity of the marriage. Nonetheless, those cases do recognize that a judicial determination regarding the validity of a marriage does not alone turn another form of action into an annulment action. . . .

"Rather than seeking a change in the status of the defendant's marriage to the husband, the plaintiff seeks a declaration of the invalidity of that marriage when it was contracted and as it may have existed in the past as a basis for determining the status of the parties upon his death. As such, the present action is more properly viewed as a declaratory judgment action."

- [State v. Moore](#), 158 Conn. 461, 466, 262 A.2d 166 (1969). "The element of consanguinity appears in all relationships enumerated in 46-1 [now 46b-21] except the relationship of stepmother or stepdaughter and stepfather or stepson. The question at once arises as to why, in its enumeration of relationships which do not include the element of consanguinity, the General Assembly saw fit to include only those of a stepparent or a stepchild. In the application of the criminal law, it would be an unwarranted extension and presumption to assume that by specifying those relationships the legislature has intended to include others which lack the element of consanguinity. Had the legislative intent been to include what, in this case, would commonly be called a relationship of niece-in-law and uncle-in-law, it would have been a simple matter to say so In the absence of such a declaration, we believe that the construction placed upon the statute by the trial court amounted to an unwarranted extension of its expressed meaning and intent."
- [Catalano v. Catalano](#), 148 Conn. 288, 291, 170 A.2d 726 (1961). "It is the generally accepted rule that a marriage valid where the ceremony is performed is valid everywhere There are, however, certain exceptions to that rule, including one which regards as invalid incestuous marriages between persons so closely related that their marriage is contrary to the strong public policy of the domicile though valid where celebrated."
- [Manning v. Manning](#), 16 Conn. Sup. 461, 462 (1950). "It is concluded that lack of parental consent does not render a marriage performed in this state either void or voidable."

**WEST KEY
NUMBERS:**

- West Key Numbers: MARRIAGE
 - # 4 Persons who may marry
 - # 4.1. _____ In general
 - # 5 _____ age
 - # 6 _____ physical capacity
 - # 7 _____ mental capacity
 - # 8 _____ race or color
 - # 10 _____ Consanguinity or affinity

DIGEST TOPICS:

- ALR Digest: *Marriage* §§ 29-40.5. Capacity of parties; who may marry.
 - §29. Generally
 - §30. Consanguinity or affinity
 - §31. Physical incapacity
 - §32. Epileptics
 - §33. Infants
 - §34. Intoxicated person
 - §35. Insane person
 - §36. Person already married
 - §37. —Under belief that divorce has been obtained or that former spouse was dead
 - §38. Divorced person
 - §39. —Spouse guilty of adultery
 - §40. —Within prohibited time after divorce
 - §40.5. Time of attack on validity
- CONNECTICUT FAMILY LAW CITATIONS (2009): *Marriage*

ENCYCLOPEDIAS:

- 52 [AM. JUR. 2D](#) *Marriage* (2000).
§§ 16-18. Age
§§ 19-23. Mental capacity
§§ 24-25. Physical capacity
- 55 [C.J.S.](#) *Marriage* (2009).
§5. What law governs
§7. Same-sex marriage
§13. Capacity of parties in general
§14. Age
§15. Mental capacity
§16. Physical capacity
§17. Consanguinity or affinity
- John D. Fletcher, *Validity Of Marriage*, 36 POF2d 441 (1983).
§§ 15-27. Proof of valid ceremonial marriage [see [Table 2](#)]
- Robin Cheryl Miller, Annotation, *Marriage Between Persons Of The Same Sex*, 81 [ALR5th](#) 1 (2000).

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (3d ed. 2010).
Chapter 3. Marriage—Generally
§ 3:4 Who may marry, in general
§ 3:5 Persons under a disability
§ 3:6 Minors
§ 3:7 Consent of parent or guardian
§ 3:8 Role of Probate Court
§ 3:9 Persons afflicted with venereal disease
§ 3:10 Persons barred by consanguinity or affinity
§ 3:11 Previously married persons

LAW REVIEWS:

- Edward S. David, *The Law And Transsexualism: A Faltering Response To A Conceptual Dilemma*, 7 CONNECTICUT LAW REVIEW 288, 322-324 (1974-75).
- *Legality Of Homosexual Marriage*, 82 YALE LAW JOURNAL 573 (1972-73).
- Meyer, David D. *The Constitutionalism of Family Law*, 42 Fam. L.Q. 531 (2008-2009)
- Goldberg, Suzanne B., [Marriage as Monopoly: History, Tradition, Incrementalism, and the Marriage/Civil Union Distinction](#), 41 CONNECTICUT LAW REVIEW 1397 (2009).

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* Originally compiled by Lawrence Cheeseman, retired Connecticut Judicial Branch Supervising Law Librarian.

Section 2: The Marriage License

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to issuing and use of a marriage licenses in Connecticut

DEFINITION:

- “Such license, when certified by the registrar, is sufficient authority for any person authorized to perform a marriage ceremony in this state to join such persons in marriage, provided the ceremony is performed within the town where the license was issued and within a period of not more than sixty-five days after the date of application.” CONN. GEN. STAT. [§ 46b-24](#) (b) (2011).

SEE ALSO:

- [Table 1 Blood Tests](#)

STATUTES:

- CONN. GEN. STAT. (2011)
[§ 7-73](#)(b). **Marriage license surcharge**

[§ 46b-24](#). **License required. Period of validity. Penalty.**
(a) No persons may be joined in marriage in this state until both have complied with the provisions of sections 46b-24, 46b-25 and 46b-29 to 46b-33, inclusive, and have been issued a license by the registrar for the town in which (1) the marriage is to be celebrated, or (2) either person to be joined in marriage resides, which license shall bear the certification of the registrar that the persons named therein have complied with the provisions of said sections.

[§ 46b-24a](#). **Validation of marriage occurring in town other than town where license issued**

[§ 46b-25](#). **Application for license**

LEGISLATIVE:

- [Public Act No. 03-188](#) § 6 (Reg. Sess.). An act concerning premarital blood test requirements and marriage certificates. (*Effective October 1, 2003*) Sections 19a-27, 46b-26 and 46b-27 of the general statutes are repealed.
- [Public Act No. 04- 255](#) §§ 12, 26 (Reg. Sess.). Act concerning funeral directors and vital records.

**ATTORNEY
GENERAL
OPINION:**

- [Marriages Performed on the Mashantucket Pequot Indian Reservation](#) (September 7, 2005).

CASES:

- [Adziovski v. Elezovski](#), No. FA-07-4014596S (Conn. Super. Ct., J.D. of New Britain at New Britain, Jul. 25, 2008). “Our Supreme Court has held that the absence of a marriage license does not render a marriage void. *Carebetta v. Carebetta*, 182 Conn. 344, 349 (1980). The court noted that an unbroken line of Connecticut cases upheld marriages with statutory deficiencies when the statute in question

did not explicitly state that a violation would render the marriage void."

- Reddy v. Reddy, No. FA 03 0285473 (Conn. Super. Ct., J.D. New Haven at Meriden, May 17, 2005). "Although Connecticut does not recognize common-law marriages, some courts have recognized marriages entered into in Connecticut that have not complied with the necessary statutory requirements where the parties believed they were married and acted as such. *Carabetta v. Carabetta*, 182 Conn. 344, 350, 438 A.2d 109 (1980). In *Carabetta* the court addressed the issue of whether, under Connecticut law, despite solemnization according to an appropriate religious ceremony, a marriage is void where there has been noncompliance with the statutory requirement of a marriage license. The court noted that public policy is strongly opposed to regarding an attempted marriage, entered into in good faith, believed by one or both parties to be legal, and followed by cohabitation, to be void. *Id.*, 346-47 (citing *Hames v. Hames*, 163 Conn. 588, 599, 316 A.2d 379 (1972)). The court further explained that '[i]n the absence of express language in the governing statute declaring a marriage void for failure to observe statutory requirement . . . such a marriage, though imperfect, is dissoluble rather than void.' *Id.*, 349. The court concluded that 'the legislature's failure expressly to characterize as void a marriage properly celebrated without a license means that such a marriage is not invalid.' See also *Hames v. Hames*, *supra*, 163 Conn. 599 (interpreting statutes not to make void a marriage consummated after the issuance of a license but deficient for want of due solemnization.)"
- Kosek v. Osman, No. FA 02-04665181 (Conn. Super. Ct., J.D. New Haven, Feb. 25, 2005). "Under these circumstances, the court finds that the parties intended to marry and were in fact legally and validly married. Their marriage was properly and ceremonially solemnized in accord with the practices of their religion. Although they did not obtain a marriage license until six months later, that certificate stated the incorrect date, and the plaintiff did not file the license until five years later, lack of formal compliance with statutory requirements pertaining to marriage licenses does not void their marriage."
- Hassan v. Hassan, No. FA01-0632261 (Conn. Super. Ct., Family Support Magistrate Division, Hartford J.D., Sep. 30, 2001) 2001 WL 1329840. "A marriage license may not be issued to any person under sixteen years of age without the endorsement of a probate judge. '(a) No license may be issued to any applicant under sixteen years of age, unless the judge of probate for the district in which the minor resides endorses his written consent on the license.' General Statutes § 46b-30. The testimony of both parties suggests that the plaintiff's parents approved of the marriage. The defendant suggests that she was over sixteen at the time. If so, that would be sufficient. However, the plaintiff claims she was fifteen. Thus, endorsement of a probate judge would be required and there has been no evidence that such endorsement was sought or granted."
- State v. Nosik, 245 Conn. 196, 202, 715 A.2d 673 (1998). "Thus, in *Carabetta*, we decided not to invalidate legally imperfect marriages if the parties had: (1) participated in a religious rite with the good faith intention of entering into a valid legal marriage; and (2) shared and manifested a good faith belief that they were, in fact, legally married. We conclude in part II of this opinion that neither of these

predicates has been established in this case.”

- [Garrison v. Garrison](#), 190 Conn. 173, 175, 460 A.2d 945 (1983). “ He [the defendant] does not argue that the mere failure to file the marriage license makes the marriage void.”
- [Carabetta v. Carabetta](#), 182 Conn. 344, 349, 438 A.2d 109 (1980). “ In sum, we conclude that the legislature’s failure expressly to characterize as void a marriage properly celebrated without a license means that such a marriage is not invalid.”
- [Yonkers v. Yonkers](#), 6 Conn. Law Tribune No. 48, p. 14 (December 1, 1980). “The fact that the legislature omitted to declare marriages entered into by persons who had not obtained a license void is significant, because such a declaration is found in the case of marriages within the prohibited degree of kinship. This leads to a conclusion that the marriage entered into between the parties is dissoluble rather than void.”
- [State Ex Rel. Felson v. Allen](#), 129 Conn. 427, 431, 29 A.2d 306 (1942). “A failure to comply with many of the requirements as to marriage provided in our statutes, where there is no express provision that such a failure will invalidate it, will not have that effect”
- [Kowalczyk V. Kleszczynski](#), 152 Conn. 575, 577, 210 A.2d 444 (1965). “Marriage certificates are treated in this state as original documents, and need not therefore be authenticated as copies. . . .”

**WEST KEY
NUMBER:**

- West Key Number: *Marriage* # 25 Licenses and licensing officers
 - (1). Necessity for and effect of failure to procure license
 - (2). Requisites and validity of license
 - (3). Authority to issue license
 - (4). Duties of officers in general
 - (5). Liability of officers and bondsmen in general
 - (6). Actions against officers and bondsmen in general

DIGEST TOPICS:

- ALR Digest: *Marriage*
 - § 5. Liability of licensing officers
 - § 12.5. License
 - § 13. —Necessity of
 - § 14. —Fraud in procuring
- CONNECTICUT FAMILY LAW CITATIONS (2011): *Marriage*

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (3d ed. 2010). Chapter 4. Marriage Licenses and Ceremonies.
 - § 4:1. Necessity
 - § 4:2. Blood testing and other medical examinations
 - § 4:3. Rubella immunity test
 - § 4:4. Application
 - § 4:5. Copy of statute to applicants
 - § 4:6. Issuance
 - § 4:7. Duration

ENCYCLOPEDIAS:

- 52 [AM. JUR. 2D](#) *Marriage* (2000).
 - § 30. License

§ 31. _____. Effect of noncompliance with licensing statute

- 55 [C.J.S. Marriage](#) (2009).
 - § 27. Licenses
 - § 28. _____. Issuance of license
 - § 29. _____. Liability for wrongful issuance of license
- John D. Fletcher, *Validity Of Marriage*, 36 POF2d 441 (1983).
§§ 15-27. Proof of valid ceremonial marriage
[see [Table 2](#)]
- Annotation, *Validity Of Solemnized Marriage As Affected By Absence Of License Required By Statute*, 61 [ALR2d](#) 847 (1958).

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Table 1: Blood Tests (Repealed)

<p align="center">Premarital Blood Tests</p> <p align="center">REPEALED: Effective October 1, 2003</p>	
<p align="center"> Public Act No. 03-188 § 6 (Reg. Sess.). An act concerning premarital blood test requirements and marriage certificates (Effective October 1, 2003) Sections 19a-27, 46b-26 and 46b-27 of the general statutes are REPEALED. </p>	
Statutes	Test for venereal disease and rubella prerequisite. Conn. Gen. Stat. (2001) § 46b-26. Waiver of tests by judge of probate. Conn. Gen. Stat. (2001) § 46b-27(a).
Legislative	“Blood test for marriage license,” by John Kasprak. Connecticut General Assembly. Office of Legislative Research Report 98-R-1526 (December 18, 1998). http://www.cga.state.ct.us/ps98/rpt/olr/98-r-1526.doc
Regulations	“Premarital test for rubella,” Conn. Agencies Regs. §19a-36-A56 (2002), eff. October 25, 1989. [Conn. Gen. Stat. (2001) § 19a-27 was REPEALED effective October 1, 2003]
Case	“It is apparent that an essential provision of this statute was not complied with, that is to say when the statement of the physician was filed with the registrar it was not accompanied by a record of the standard laboratory blood test made. The only thing that accompanied the statement was a certificate by the Director of the Bureau of Laboratories of the State Department of Health that a standard laboratory blood test had in fact been made and reported to the physician who made the statement. This certificate is not at all the thing that the statute expressly requires. It is a record of the standard laboratory blood test made which must be filed with the statement. A certificate that a test has been made is one thing. The record required by the statute is quite another thing.” Doe v. Doe, 11 Conn. Sup. 157 (1942)
Text	7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (3d ed. 2010). § 4.2 Blood testing and other medical examinations § 4.3 Rubella immunity test

Section 3: Who May Perform a Marriage

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to who may perform a marriage in Connecticut including liability of person officiating and the validity of marriages performed by unauthorized persons.
- DEFINITIONS:**
- “All marriages attempted to be celebrated by any other person are void.” CONN. GEN. STAT. [§ 46b-22\(a\)](#) (2011).
- STATUTES:**
- CONN. GEN. STAT. (2011)
[§ 46b-22](#). Who may join persons in marriage

[§ 46b-22a](#). Validity of marriages performed by unauthorized justice of the peace

[§ 46b-23](#). Joining persons in marriage knowingly without authority
- LEGISLATIVE:**
- ADAM WOLKOFF, LICENSE TO PERFORM MARRIAGE, [2006-R-0322](#) (May 2, 2006).
 - SUSAN PRICE-LIVINGSTON, HISTORY OF CIVIL MARRIAGE IN CONNECTICUT: SELECTED CHANGES, Connecticut General Assembly, Office of Legislative Research, OLR Backgrounder [2002-R-0850](#) (October 15, 2002).
- CASES:**
- [Adziovski v. Elezovski](#), No. FA-07-4014596S (Conn. Super. Ct., J.D. of New Britain at New Britain, Jul. 25, 2008). “With respect to the Imam who conducted the marriage ceremony, Connecticut law provides that [a]ll marriages solemnized according to the forms and usages of any religious denomination in this state are valid. Conn. Gen. Stat. 46b-22. Further, marriages conducted by an Imam, without a marriage license, have been upheld as valid by other Connecticut courts.”
 - [Ross v. Ross](#), No. FA97 0162587 S (Ct. Super. Ct., J.D. Stamford-Norwalk, Aug. 10, 1998). “There are two types of regulations concerning the validity of a marriage: 1) Substantive requirements determining those eligible to be married and 2) The ‘formalities prescribed by the state for the effectuation of a legally valid marriage.’ *Carabetta v. Carabetta*, 182 Conn. 344, 347 (1980). The formality requirements are of two sorts: 1) a marriage license and 2) solemnization. This case involves the issue of lack of solemnization.”
 - [Carabetta v. Carabetta](#), 182 Conn. 344, 348, 438 A.2d 109 (1980). “Although solemnization is not at issue in the case before us, this language is illuminating since it demonstrates that the legislature has on occasion exercised its power to declare expressly that failure to observe some kinds of formalities, e.g., the celebration of a marriage by a person not authorized by this section to do so, renders a marriage void.”

- State Ex Rel. Felson v. Allen, 129 Conn. 427, 432 (1942). "The situation [marriage performed by a person not authorized by statute] falls within the express terms of the statute, which declares such a marriage to be void."
- Town of Goshen v. Town of Stonington, 4 Conn. 209 (1822). *A clergyman, in the celebration of marriage, is a public civil officer.*
- Kibbe v. Antram, 4 Conn. 134, 139 (1821). "...whether Mr. Dimick was an ordained minister within the meaning of the statute."
- Roberts v. State Treasurer, 2 Root 381 (1796).

**ATTORNEY
GENERAL
OPINIONS:**

- "Minister emeritus." 21 Op. Atty. Gen. 297, 298 (May 29, 1939). "We believe, further, that a minister emeritus has the same status as a minister who has retired, if he has not taken up another vocation or profession, and may still be considered as being in the work of the ministry."
- Marriages Performed on the Mashantucket Pequot Indian Reservation (September 7, 2005).

**WEST KEY
NUMBER:**

- *Marriage*
 - # 27. Solemnization or celebration. Authority to perform ceremony.
 - # 30. Liability of person officiating
 - # 31. Certificate

DIGEST TOPICS:

- ALR Digest: *Marriage* § 6. Liability of person officiating,
- CONNECTICUT FAMILY LAW CITATIONS (2011): *Marriage*

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (3d ed. 2010).
 - Chapter 4. Marriage Licenses and Ceremonies
 - § 4:8 Who may solemnize marriages
 - § 4:9. Formalities of ceremony
 - § 4:10. Duties of persons officiating at marriage
 - § 4:11. Effect of lack of authority to solemnized marriage
 - § 4:12. Penalty for unauthorized performance
 - § 4:13. Effect of lack of solemnization
 - § 4:14. Return and recordation
 - § 4:15. Proof of marriage

ENCYCLOPEDIAS:

- 52 AM. JUR. 2D *Marriage* (2000).
 - § 33. Performance of marriage ceremony by qualified person
 - § 34. —Effect of violation of solemnizing statute
- 55 C.J.S. *Marriage* (2009).
 - § 31. Solemnization. Persons who may solemnize.
 - § 32. Solemnization. Liabilities of persons solemnizing
- John D. Fletcher, *Validity Of Marriage*, 36 POF2d 441 (1983).
 - §§ 15-27. Proof of valid ceremonial marriage [see Table 2]

- Annotation, *Validity Of Marriage As Affected By Lack Of Legal Authority Of Person Solemnizing It*, 13 ALR4th 1323 (1982).

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Table 2: Proof of Valid Ceremonial Marriage

Table 2: Proof of Valid Ceremonial Marriage 36 POF2d 441 (1983) John D. Fletcher	
Testimony of Investigator	
§15	Authentication of marriage certificate
Testimony of Eyewitness to Marriage	
§16	Parties' cohabitation as married couple
§17	Identification of parties as participants in ceremony
§18	Performance of ceremony
§19	Capacity of parties at time of ceremony
C. Testimony of Custodian of Church Records	
§20	Church record of marriage
Testimony as to Statements of Family Members	
§21	Qualifications of witness
§22	Qualifications of declarant
§23	Statements by declarant about marriage
§24	Statements by party to marriage
Testimony as to Family Reputation and Family Documents	
§25	Relationship of witness to family
§26	Family reputation as to marriage
§27	Family record of marriage

Section 4: The Marriage Ceremony

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to marriage ceremonies in Connecticut

DEFINITIONS:

- “Our statutory scheme specifies no precise form for the celebration of marriage; nor does it explicitly require that the parties declare that they take one another as husband and wife No requirement is made concerning witnesses, but, like consent, the physical presence of the parties before an official is an implicit requirement to the performance of a marriage in this state.” [Hames v. Hames](#), 163 Conn. 588, 596, 316 A.2d 379 (1972).
- “The law has not pointed out any mode in which marriages shall be celebrated, but has left it to the common custom and practice of the country. Any form of words which explicitly constitute a contract and engagement from the parties to each other, and published in the presence of, and by the officer appointed by the Statute, will be a valid marriage.” 1 Swift, Digest, p. 20.
- “Consent of the participants is a necessary condition to the creation of a valid marriage relationship, and there must be an intention of the parties to enter into the marriage status.” [Bernstein v. Bernstein](#), 25 Conn. Sup. 239, 201 A.2d 660 (1964)

STATUTES:

- CONN. GEN. STAT. (2011)
[§ 46b-24](#). **License. Period of validity. Penalty for solemnization without license. Validity of marriage ceremony.**
(d) Except as otherwise provided in this chapter, in order to be valid in this state, a marriage ceremony shall be conducted by and in the physical presence of a person who is authorized to solemnize marriages.

[§ 46b-24a](#). **Validation of marriage occurring in town other than town where license issued**

CASES:

- [Ross v. Ross](#), No. FA97 0162587 S (Ct. Super. Ct., J.D. Stamford-Norwalk, Aug. 10, 1998), 22 CONN. L. RPTR. 637,639 (November 2, 1998), 1998 WL 516159 (Conn. Super. 1998). “The Supreme Court reversed and held that the plaintiffs absence in 1960 from the ceremony in which the priest signed the marriage certificate prevented solemnization for the purpose of General Statutes § 46-3 (currently General Statutes § 46b-22). The noncompliance with that statute precluded the parties from acquiring valid marital status and rendered the 1960 marriage voidable.”
- [State v. Nosik](#), 245 Conn. 196, 207, 715 A.2d 673 (1998). “In light of these facts, the trial court reasonably could have concluded that the defendant did not participate in the ceremony in New Jersey with the good faith belief that she was entering into a valid legal marriage. We conclude, therefore, that the trial court’s finding that

the service at St. George's was not a valid wedding ceremony was not clearly erroneous."

- [Garrison v. Garrison](#), 190 Conn. 173, 175, 460 A.2d 945 (1983). "He [the defendant] does not argue that the mere failure to file the marriage license makes the marriage void."
- [Hames v. Hames](#), 163 Conn. 588, 596, 316 A.2d 379 (1972). ". . . the purported marriage, deficient for want of due solemnization, was voidable rather than void, insofar as the latter term may imply an absolute nullity."
- [Perlstein v. Perlstein](#), 152 Conn. 152, 157, 204 A.2d 909 (1964). "A marriage ceremony, especially if apparently legally performed, gives rise to a presumptively valid status of marriage which persists unless and until it is overthrown by evidence in an appropriate judicial proceeding. No mere claim of bigamy, whether made in a pleading or elsewhere, would establish that a marriage was bigamous."
- [State Ex Rel. Felson v. Allen](#), 129 Conn. 427, 431-432, 29 A.2d 306 (1942). "The plaintiffs appeared in Greenwich before a person whom they believed to be a justice of the peace; he purported to join them in marriage, but they are unable to prove that he was authorized by the statute to do so, and they do not claim that there is any basis upon which we can hold that he was. The situation falls within the express terms of the statute, which declares such a marriage to be void."

**ATTORNEY
GENERAL
OPINIONS:**

- "Marriage by proxy," 23 Op.Atty.Gen. 147 (July 1, 1943). "It is my opinion that Connecticut does not permit marriages by proxy, nor does it recognize such marriages when entered into elsewhere."

**WEST KEY
NUMBER:**

- *Marriage*
 - # 23. Ceremonial marriage in general
 - # 26. Solemnization or celebration
 - # 32. Return and recording or registration

DIGEST TOPICS:

- ALR Digest: *Marriage* § 15. Solemnization or celebration
- CONNECTICUT FAMILY LAW CITATIONS (2009): *Marriage*

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (3d ed. 2010).
 - § 3.3 Marriage by proxy
 - § 4.9. Formalities of ceremonies
 - § 4.14. Return and recordation
 - § 4.15. Proof of marriage

ENCYCLOPEDIAS:

- 52 [AM. JUR. 2D](#) *Marriage* (2000).
 - § 13. Ceremonial marriage. Generally
 - § 14. Necessity of consummation or cohabitation
 - § 15. Proxy marriage
- 55 [C.J.S.](#) *Marriage* (2009).
 - § 30. Solemnization
 - § 33. Place of solemnization
 - § 34. Form of ceremony

§ 35. Certificate and return or record

§ 36. Mistake

§ 37. Fraud

- John D. Fletcher, *Validity Of Marriage*, 36 POF2d 441 (1983). §§ 15-27. Proof of valid ceremonial marriage
[see [Table 2](#)]
- Annotation, *Validity Of Solemnized Marriage As Affected By Absence Of License Required By Statute*, 61 [ALR2d](#) 847 (1958).

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Section 5: Foreign and Out-Of-State Marriages in Connecticut

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the validity of foreign marriages in Connecticut

DEFINITION:

- [Public Act No. 09-13, Section 1](#). (NEW) (Effective from passage) A marriage, or a relationship that provides substantially the same rights, benefits and responsibilities as a marriage, between two persons entered into in another state or jurisdiction and recognized as valid by such other state or jurisdiction shall be recognized as a valid marriage in this state, provided such marriage or relationship is not expressly prohibited by statute in this state.
- **COMITY:** "The principle of comity provides the basis upon which state courts give validity to divorce judgments of foreign countries. Comity permits recognition of judgments of foreign countries pursuant to international duty and convenience, with due regard for the rights of American citizens." [Baker v. Baker](#), 39 Conn. Sup. 66, 68, 468 A.2d 944 (1983).
- "A state has the authority to declare what marriages of its citizens shall be recognized as valid, regardless of the fact that the marriages may have been entered into in foreign jurisdictions where they were valid." [Catalano v. Catalano](#), 148 Conn. 288, 291, 170 A.2d 726 (1961).
- "Neither case law nor § 42b-28 suggests that courts are under any obligation to recognize a marriage which is not valid in the country in which it was obtained or which was not celebrated in the presence of the U.S. ambassador or minister to that country or a U.S. consular officer accredited to such country at a place within his consular jurisdiction." [Reddy v. Reddy](#), No. FA 03 0285473 (Conn. Super. Ct., J.D. New Haven at Meriden, May 17, 2005).

STATUTES:

- CONN. GEN. STAT. (2011)
[§ 46b-28](#). **When marriages in foreign country are valid.** All marriages in which one or both parties are citizens of this state, celebrated in a foreign country, shall be valid, provided: (1) Each party would have legal capacity to contract such marriage in this state and the marriage is celebrated in conformity with the law of that country; or (2) the marriage is celebrated, in the presence of the ambassador or minister to that country from the United States or in the presence of a consular officer of the United States accredited to such country, at a place within his consular jurisdiction, by any ordained or licensed clergyman engaged in the work of the ministry in any state of the United States or in any foreign country.

- [§ 46b-28a](#). **Recognition of marriages and other relationships entered into in another state or jurisdiction.** A marriage, or a relationship that provides substantially the same rights, benefits and responsibilities as a marriage, between two persons entered into in another state or jurisdiction and recognized as valid by such other state or jurisdiction shall be recognized as a valid marriage in this state, provided such marriage or relationship is not expressly prohibited by statute in this state.
- [§ 46b-28b](#). **Recognition by another state or jurisdiction of marriages entered into in this state.** A marriage between two persons entered into in this state and recognized as valid in this state may be recognized as a marriage, or a relationship that provides substantially the same rights, benefits and responsibilities as a marriage, in another state or jurisdiction if one or both persons travel to or reside in such other state or jurisdiction.

CASES:

- [Baker v. Baker](#), 39 Conn.Sup. 66, 71, 468 A.2d 944 (1983) "For although the majority of states refuse to recognize the validity of a foreign divorce decree when their own jurisdictional requirements with respect to domicile are absent, most courts, when equities mandate, will give practical recognition to the foreign decree. Consequently, the party attacking the foreign decree may be effectively barred from securing judgment of its invalidity. Thus, in [Chilcott v. Chilcott](#), 257 Cal.App.2d 868, 65 Cal.Rptr. 263 (1968), the court held that even if a wife's Mexican divorce were invalid, her husband would be estopped to deny its validity where both parties had remarried in the belief that they were divorced."
- [Litvaitis v. Litvaitis](#), 162 Conn. 540, 546, 295 A.2d 519 (1972). "In the case at bar, the court found that the defendant went to Mexico solely for the purpose of securing a divorce and that he intended to return to Connecticut. The plaintiff never submitted herself to the jurisdiction of the Mexican court. 'To constitute domicile, the residence at the place chosen for the domicile must be actual, and to the fact of residence there must be added the intention of remaining permanently; and that place is the domicile of the person in which he has voluntarily fixed his habitation, not for a mere temporary or special purpose, but with the present intention of making it his home.' *Rice v. Rice*, supra, [134 Conn. 440,] 445-46; *Mills v. Mills*, 119 Conn. 612, 617, 179 A. 5. It is quite obvious that the defendant, who was the only party to appear before the foreign court, was not a domiciliary of the Mexican state. The court properly refused to recognize the Mexican divorce as terminating the marriage."
- [Catalano v. Catalano](#), 148 Conn. 288, 291, 170 A.2d 726 (1961). "It is the generally accepted rule that a marriage valid where the ceremony is performed is valid everywhere There are, however, certain exceptions to that rule, including one which regards as invalid incestuous marriages between persons so closely related that their marriage is contrary to the strong public policy of the domicile though valid where celebrated. Restatement, Conflict of Laws 132 (b). That exception may be expressed in the terms of a statute or by necessary implication."
- [Fantasia v. Fantasia](#), 8 Conn. Supp. 25 (1940). " . . . it is universally

recognized that a marriage, valid in the jurisdiction in which it is performed, is valid everywhere unless, of course, it violates some rule of public policy, and for that reason it is concluded that the marriage involved in the present case, being valid in New York is likewise valid in Connecticut."

**WEST KEY
NUMBER:**

- *Marriage* # 17. Laws of foreign countries

DIGEST TOPICS:

- CONNECTICUT FAMILY LAW CITATIONS (2011): *Comity; Foreign Divorce*

ENCYCLOPEDIAS:

- 52 [AM. JUR. 2D](#) *Marriage* (2000).
§§ 62-76. Effect of conflicting foreign law
- 55 [C.J.S.](#) *Marriage* (1998).
§ 5. What law governs
§ 6. Lex loci contractus as controlling
- John D. Fletcher, *Validity Of Marriage*, 36 POF2d 441 (1983).
§§ 15-27. Proof of valid ceremonial marriage [see [Table 2](#)]
- John C. Williams, Annotation, *Recognition By Forum State Of Marriage Which, Although Invalid Where Contracted, Would Have Been Valid If Contracted Within Forum State*, 82 [ALR3d](#) 1240 (1978).

**TEXTS &
TREATISES:**

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (3d ed. 2010).
Chapter 5 Foreign Marriage
§ 5:1. Law governing capacity and status
§ 5:2. Effect of validity under foreign law
§ 5:3. Proof of foreign law
§ 5:4. Nonage or want of parental consent
§ 5:5. Marriage against consanguinity prohibition

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Section 6: Common Law Marriage

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the validity of common law marriages in Connecticut including recognition by Connecticut of out of state common law marriages.
- STATUTES:**
- CONN. GEN. STAT. (2011)
[§ 46b-22](#). **Who may join persons in marriage** "All marriages attempted to be celebrated by any other person are void."
- CASES:**
- [Biercevicz v. Liberty Mutual Insurance Company](#), 49 Conn. Sup. 175, 865 A.2d 1267 (2004). "Indeed, as in New Jersey, Connecticut does not recognize common-law marriage. Engaged couples are not recognized for the purposes of workers' compensation, social security benefits, welfare, or inheritance by intestate succession. It is also noted that Connecticut would not allow an unmarried person to sue for loss of consortium, whether or not that person cohabited with the injured party."
 - [Hames v. Hames](#), 163 Conn. 588, 596-597, 316 A.2d 379 (1972). "Under 46-3, 'all marriages attempted to be celebrated' by an unauthorized person 'shall be void.' This prohibiting clause of 46-3 was construed in *State ex rel. Felson v. Allen*, [129 Conn. 427] supra, 432, to carry 'the necessary implication that no valid marriage is created where there is no celebration at all but merely an exchange of promises, or cohabitation under such circumstances as would constitute a common law marriage.' In the *Felson* case, the court construed 46-3 to invalidate marriages in which the only celebrants were the would-be spouses themselves — that is, where neither met the statutory criteria to act as the state's agent in performing the marriage. Implicit in this decision, however, is the proposition that a third party must witness or officiate at a ceremony wherein the parties each presently consent to marriage."
 - [State Ex Rel. Felson v. Allen](#), 129 Conn. 427, 431, 29 A.2d 306 (1942). "While the statute in terms makes void only a marriage celebrated by an unauthorized person, the provision carries the necessary implication that no valid marriage is created when there is no celebration at all but merely an exchange of promises, or cohabitation under such circumstances as would constitute a common-law marriage **Our law does not recognize common-law marriages.**" [emphasis added]
 - [Garrity v. Gingras](#), 12 Conn. L. Rptr. 305 at 305 (September 26, 1994). "Connecticut courts do recognize the existence of common law marriages in other states and 'it is a generally accepted rule that a marriage that is valid in the state where contracted is valid everywhere.' [Collier v. Milford](#), 206 Conn. 242,248 (1988)."
 - [Boland v. Catalano](#), 202 Conn. 333, 339, 521 A.2d 142 (1987). "We agree with the trial referee that cohabitation alone does not

create any contractual relationship or, unlike marriage, impose other legal duties upon the parties. In this jurisdiction, common law marriages are not accorded validity The rights and obligations that attend a valid marriage simply do not arise where the parties choose to cohabit outside the marital relationship Ordinary contract principles are not suspended, however, for unmarried persons living together, whether or not they engage in sexual activity."

- [McAnerney v. McAnerney](#), 165 Conn. 277, 285, 334 A.2d 437 (1973). "Although other jurisdictions may recognize common-law marriage or accord legal consequences to informal marriage relationships, Connecticut definitely does not It follows that although two persons cohabit and conduct themselves as a married couple, our law neither grants to nor imposes upon them marital status. Thus, for the purposes of the laws of this jurisdiction and for the purposes of the contract, Mrs. McAnerney's cohabitation with another has no effect on the contractual provision whereby the plaintiff's obligation terminates with the wife's remarriage."
- [Hames v. Hames](#), 163 Conn. 588, 596, 316 A.2d 379 (1972). "Marital status, of course, arises not from the simple declarations of persons nor from the undisputed claims of litigants It is rather created and dissolved only according to law."
- [Collier v. City of Milford](#), 206 Conn. 242, 249, 537 A.2d 474 (1988). "This court has never had the occasion to rule directly on the question of the validity in this state of a common law marriage validly contracted in accordance with the law of another state. The Superior Court in [Delaney v. Delaney](#), 35 Conn. Sup. 230, 405 A.2d 91 (1979), however, held that the validity of a marriage is governed by lex loci contractus and recognized the validity of a common law marriage contracted in Rhode Island Further, it is the generally accepted rule that a marriage that is valid in the state where contracted is valid everywhere unless for some reason the marriage is contrary to the strong public policy of the state required to rule on its validity."

FORMS:

- 12A [AM JUR LEGAL FORMS](#) *Marriage* (2008).
 § 171:18. Affirmation of Common Law Marriage
 § 171:19. Agreement to Establish Common Law Marriage
- 16B [AM JUR LEGAL FORMS](#) *Social Security* (2011).
 § 235:24. Statement—Facts Showing Valid Common-Law Marriage
 § 235:25. Certificate—Of Attorney—Recognition Of Common-Law Marriage In Particular Jurisdiction
- [NICHOLS CYCLOPEDIA OF LEGAL FORMS](#) *Husband and Wife* (2010).
 § 100.378. Affirmation of Common Law Marriage

WEST KEY NUMBERS:

- *Marriage* # 13. Essentials in general. Common-law requisites
- *Marriage* # 22. Marriage by cohabitation and reputation

DIGEST TOPICS:

- ALR Digest: Marriage §§24-27
- CONNECTICUT FAMILY LAW CITATIONS (2009): *Marriage*

TEXTS &

- 7 ARNOLD H. RUTKIN AND KATHLEEN A. HOGAN, [CONNECTICUT PRACTICE](#)

TREATISES:

[SERIES, FAMILY LAW AND PRACTICE WITH FORMS](#) (3d ed. 2010).

Chapter 4. Marriage Licenses and Ceremonies

§ 4:16. Common-law marriage — In general

§ 4:17. Validity of common-law marriage contracted in state.

§ 4:18. Validity of common-law marriage contracted outside state.

§ 4:19. Cohabitation after invalid marriage.

ENCYCLOPEDIAS:

- 52 [AM. JUR. 2D](#) *Marriage* (2000).
§§ 36-46. Common-law marriage
- John D. Fletcher, *Validity Of Marriage*, 36 POF2d 441 (1983).
§§ 28-41. Proof of valid common-law marriage
- 55 [C.J.S.](#) *Marriage* (2009).
§ 10. Common law marriages in general.
§ 20. Consent of the parties in general. Requisite and sufficiency
 b. Common-law marriage
§ 22. Mutual agreement. Common law marriage
§ 25. Consummation and assumption of marital rights and duties. Common-law marriages

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Table 3: Marital Privilege – Evidentiary Matters

Update: *An Act Concerning Domestic Violence*, [Public Act 11-152](#) (Effective October 1, 2011), secs. 14 and 15, amends the adverse spousal testimony privilege, CONN. GEN. STAT. [§ 54-84a](#) (2011).

TAIT'S HANDBOOK OF CONNECTICUT EVIDENCE (4th ed. 2008)	
Chapter 5: Marital and Family Privileges	
§ 5.33	In General
§ 5.34	Husband – Wife: Testimonial Privilege
§ 5.35	Husband – Wife: Confidential Communication Privilege
CONNECTICUT TRIAL EVIDENCE NOTEBOOK (2d ed. 2010)	
Page S-25	Spousal Privilege
CONNECTICUT PRACTICE SERIES, RULES OF EVIDENCE, v.11 (2011 ed.)	
Article 5: Privileges	
§ 5-1	General Rule (see subsection b)
CONNECTICUT EVIDENCE, v.2 (1988)	
§ 126c	Husband – Wife Privilege
CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (3d ed. 2010).	
§ 23:11	Familial Privileges

State v. Christian, 267 Conn. 710, 841 A. 2d 1158 (2004)

We note at the outset that evidentiary privileges are governed by § 5-1 of the Connecticut Code of Evidence, which provides: 'Except as otherwise required by the constitution of the United States, the constitution of this state, the General Statutes or the Practice Book, privileges shall be governed by the principles of the common law.' The adverse spousal testimony privilege, which is codified at § 54-84a, belongs to the 'witness spouse.' *State v. Saia*, 172 Conn. 37, 43, 372 A.2d 144 (1976). Under that privilege, the husband or wife of a criminal defendant has a privilege not to testify against his or her spouse in a criminal proceeding, provided that the couple is married at the time of trial. See *id.*; *State v. Volpe*, 113 Conn. 288, 290, 155 A. 223 (1931); see also C. Tait, *Connecticut Evidence* (3d Ed. 2001) § 5.34.1, pp. 325-26. The marital communications privilege, on the other hand, 'permits an individual to refuse to testify, and to *prevent* a spouse or former spouse from testifying, as to any confidential communication made by the individual to the spouse during their marriage.' (Emphasis added.) *United States v. Rakes*, 726 F.3d 1, 3 (1st Cir. 1998); see also *Trammel v. United States*, 445 U.S. 40, 51, 100 S.Ct. 906, 63 L.Ed.2d 186 (1980) (marital communications privilege 'protect[s] information privately disclosed between husband and wife in the confidence of the marital relationship'); 1 C. McCormick, *Evidence* (5th Ed. 1999) §§ 78 through 86, pp. 323-42; C. Tait, *supra*, §§ 5.35.1 through 5.35.5, pp. 328-31. Because the marital communications privilege is not addressed squarely by either the federal constitution, state constitution, General Statutes or Practice Book, it is governed by the principles of the common law. See Conn. Code Evid. § 5-1.

Figure 1: Public Act No. 09-13 (Same Sex Couples)

AN ACT IMPLEMENTING THE GUARANTEE OF EQUAL PROTECTION UNDER THE CONSTITUTION OF THE STATE FOR SAME SEX COUPLES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective from passage*) A marriage, or a relationship that provides substantially the same rights, benefits and responsibilities as a marriage, between two persons entered into in another state or jurisdiction and recognized as valid by such other state or jurisdiction shall be recognized as a valid marriage in this state, provided such marriage or relationship is not expressly prohibited by statute in this state.

Section 2. (NEW) (*Effective from passage*) A marriage between two persons entered into in this state and recognized as valid in this state may be recognized as a marriage, or a relationship that provides substantially the same rights, benefits and responsibilities as a marriage, in another state or jurisdiction if one or both persons travel to or reside in such other state or jurisdiction.

Section 3. Section 46b-20 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

As used in this chapter:

[(a)] (1) "Registrar" means the registrar of vital statistics;

[(b)] (2) "Applicant" means applicant for a marriage license;

[(c)] (3) "License" means marriage license; and

(4) "Marriage" means the legal union of two persons.

Section 4. (NEW) (*Effective from passage*) A person is eligible to marry if such person is:

(1) Not a party to another marriage, or a relationship that provides substantially the same rights, benefits and responsibilities as a marriage, entered into in this state or another state or jurisdiction, unless the parties to the marriage will be the same as the parties to such other marriage or relationship;

(2) Except as provided in section 46b-30 of the general statutes, at least eighteen years of age;

(3) Except as provided in section 46b-29 of the general statutes, not under the supervision or control of a conservator; and

(4) Not prohibited from entering into a marriage pursuant to section 46b-21 of the general statutes, as amended by this act.

Section 5. Section 46b-25 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

No license may be issued by the registrar until both persons have appeared before the registrar and made application for a license. The registrar shall issue a license to any two persons eligible to marry under this chapter and section 4 of this act. The license shall be completed in its entirety, dated, signed and sworn to by each applicant and shall state each applicant's name, age, race, birthplace, residence, whether single, widowed or divorced and whether under the supervision or control of a conservator or guardian. The Social Security numbers of [the bride and the groom] both persons shall be recorded in the "administrative purposes" section of the license. If the license is signed and sworn to by the applicants on different dates, the earlier date shall be deemed the date of application.

Section 6. Section 46b-21 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

[No man may marry his mother, grandmother, daughter, granddaughter, sister, aunt, niece, stepmother or stepdaughter, and no woman may marry her father, grandfather, son, grandson, brother, uncle, nephew, stepfather or stepson.] No person may marry such person's parent, grandparent, child, grandchild, sibling, parent's sibling, sibling's child, stepparent or stepchild. Any marriage within these degrees is void.

Section 7. (NEW) (*Effective from passage*) (a) No member of the clergy authorized to join persons in marriage pursuant to section 46b-22 of the general statutes shall be required to solemnize any marriage in violation of his or her right to the free exercise of religion guaranteed by the first amendment to the United States Constitution or section 3 of article first of the Constitution of the state.

(b) No church or qualified church-controlled organization, as defined in 26 USC 3121, shall be required to participate in a ceremony solemnizing a marriage in violation of the religious beliefs of that church or qualified church-controlled organization.

Section 8. (NEW) (*Effective from passage*) Wherever in the general statutes or the public acts the term "husband", "wife", "groom", "bride", "widower" or "widow" is used, such term shall be deemed to include one party to a marriage between two persons of the same sex.

Section 9. Section 45a-727a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

The General Assembly finds that:

(1) The best interests of a child are promoted by having persons in the child's life who manifest a deep concern for the child's growth and development;

(2) The best interests of a child are promoted when a child has as many persons loving and caring for the child as possible; and

(3) The best interests of a child are promoted when the child is part of a loving, supportive and stable family, whether that family is a nuclear, extended, split, blended, single parent, adoptive or foster family. [; and]

[(4) It is further found that the current public policy of the state of Connecticut is now limited to a marriage between a man and a woman.]

Section 10. Section 46b-38nn of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

Parties to a civil union shall have all the same benefits, protections and responsibilities under law, whether derived from the general statutes, administrative regulations or court rules, policy, common law or any other source of civil law, as are granted to spouses in a marriage, [, which is defined as the union of one man and one woman.]

Section 11. (NEW) (*Effective from passage*) (a) On and after the effective date of this section and prior to October 1, 2010, two persons who are parties to a civil union entered into pursuant to sections 46b-38aa to 46b-38oo, inclusive, of the general statutes, as amended by this act, may apply for and be issued a marriage license, provided such persons are otherwise eligible to marry under section 4 of this act and chapter 815e of the general statutes and the parties to the marriage will be the same as the parties to the civil union.

(b) After the celebration of such marriage and upon the recording of the license certificate or notarized affidavit with the registrar of vital statistics of the town where the marriage took place pursuant to section 46b-34 of the general statutes, the civil union of such persons shall be merged into the marriage by operation of law as of the date of the marriage stated in the certificate or affidavit.

Section 12. (NEW) (*Effective from passage*) (a) Two persons who are parties to a civil union established pursuant to sections 46b-38aa to 46b-38oo, inclusive, of the general statutes, as amended by this act, that has not been dissolved or annulled by the parties or merged into a marriage by operation of law under section 11 of this act as of October 1, 2010, shall be deemed to be married under chapter 815e of the general statutes, as amended by this act, on said date and such civil union shall be merged into such marriage by operation of law on said date.

(b) Notwithstanding the provisions of subsection (a) of this section, the parties to a civil union with respect to which a proceeding for dissolution, annulment or legal separation is pending on October 1, 2010, shall not be deemed to be married on said date and such civil union shall not be merged into such marriage by operation of law but shall continue to be governed by the provisions of the general statutes applicable to civil unions in effect prior to October 1, 2010.

Section 13. (NEW) (*Effective from passage*) Nothing in section 11, 12 or 21 of this act shall impair or affect any action or proceeding commenced, or any right or benefit accrued, or responsibility incurred, by a party to a civil union prior to October 1, 2010.

Section 14. Section 46a-81a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

For the purposes of sections 4a-60a, 45a-726a and 46a-81b to [46a-81r] 46a-81q, inclusive, "sexual orientation" means having a preference for heterosexuality, homosexuality or bisexuality, having a history of such preference or being identified with such preference, but excludes any behavior which constitutes a violation of part VI of chapter 952.

Section 15. Subsection (a) of section 17b-137a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) The Social Security number of the applicant shall be recorded on each (1) application for a license, certification or permit to engage in a profession or occupation regulated pursuant to the provisions of title 19a, 20 or 21; (2) application for a commercial driver's license or commercial driver's instruction permit completed pursuant to subsection (a) of section 14-44c; and (3) application for a marriage license made under section 46b-25, as amended by this act, [or for a civil union license under section 46b-38hh.]

Section 16. Section 46b-150d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

An order that a minor is emancipated shall have the following effects: (1) The minor may consent to medical, dental or psychiatric care, without parental consent, knowledge or liability; (2) the minor may enter into a binding contract; (3) the minor may sue and be sued in such minor's own name; (4) the minor shall be entitled to such minor's own earnings and shall be free of control by such minor's parents or guardian; (5) the minor may establish such minor's own residence; (6) the minor may buy and sell real and personal property; (7) the minor may not thereafter be the subject of a petition under section 46b-129 as an abused, dependent, neglected or uncared for child or youth; (8) the minor may enroll in any school or college, without parental consent; (9) the minor shall be deemed to be over eighteen years of age for purposes of securing an operator's license under section 14-36 and a marriage license under subsection (b) of section 46b-30; [or a civil union license under section 46b-38jj] without parental consent;] (10) the minor shall be deemed to be over eighteen years of age for purposes of registering a motor vehicle under section 14-12; (11) the parents of the minor shall no longer be the guardians of the minor under section 45a-606; (12) the parents of a minor shall be relieved of any obligations respecting such minor's school attendance under section 10-184; (13) the parents shall be relieved of all obligation to support the minor; (14) the minor shall be emancipated for the purposes of parental liability for such minor's acts under section 52-572; (15) the minor may execute releases in such minor's own name under section 14-118; and (16) the minor may enlist in the armed forces of the United States without parental consent.

Section 17. (NEW) (*Effective from passage*) Notwithstanding any other provision of law, a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, shall not be required to provide services, accommodations, advantages, facilities, goods or privileges to an individual if the request for such services, accommodations, advantages, facilities, goods or privileges is related to the solemnization of a marriage or celebration of a marriage and such solemnization or celebration is in violation of their religious beliefs and faith. Any refusal to provide services, accommodations, advantages, facilities, goods or privileges in accordance with this section shall not create any civil claim or cause of action, or result in any state action to penalize or withhold benefits from such religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.

Section 18. (NEW) (*Effective from passage*) The marriage laws of this state shall not be construed to affect the ability of a fraternal benefit society to determine the admission of members as provided in section 38a-598 of the general statutes or to determine the scope of

beneficiaries in accordance with section 38a-636 of the general statutes, and shall not require a fraternal benefit society that has been established and is operating for charitable and educational purposes and which is operated, supervised or controlled by or in connection with a religious organization to provide insurance benefits to any person if to do so would violate the fraternal benefit society's free exercise of religion as guaranteed by the first amendment to the Constitution of the United States and section 3 of article first of the Constitution of the state.

Section 19. (NEW) (*Effective from passage*) Nothing in this act shall be deemed or construed to affect the manner in which a religious organization may provide adoption, foster care or social services if such religious organization does not receive state or federal funds for that specific program or purpose.

Section 20. Section 46a-81r of the general statutes is repealed. (*Effective from passage*)

Section 21. Sections 46b-38aa to 46b-38mm, inclusive, section 46b-38nn, as amended by this act, and section 46b-38oo of the general statutes are repealed. (*Effective October 1, 2010*)